



February 11, 2005

SENATE BILL No. 310

DIGEST OF SB 310 (Updated February 10, 2005 1:18 pm - DI 87)

Citations Affected: IC 5-14.

Synopsis: Open door law violations. Provides that absent express statutory authorization, a member of a governing body who is not physically present at a meeting but communicates with board members during the meeting by telephone, computer, videoconferencing, or any other electronic means of communication may not participate in a final vote taken at the meeting. Provides that a series of gatherings by the governing body of a state or local government agency violates the open door law if: (1) less than a quorum of members of the governing body attend each gathering; (2) the total number of members attending all gatherings constitutes at least a quorum of the governing body; (3) All the gatherings concern the same subject matter and are held within a period of not more than seven days; and (4) the gatherings are held for the purpose of conducting official business.

Effective: July 1, 2005.

**Gard, Broden, Antich-Carr, Drozda,
Kruse, Miller**

January 6, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.
February 10, 2005, amended, reported favorably — Do Pass.

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SB 310—LS 7333/DI 87+



February 11, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 310

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-1.5-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as
3 provided in section 6.1 of this chapter, all meetings of the governing
4 bodies of public agencies must be open at all times for the purpose of
5 permitting members of the public to observe and record them.
6 (b) A secret ballot vote may not be taken at a meeting.
7 (c) A meeting conducted in compliance with IC 5-1.5-2-2.5 does not
8 violate this section.
9 (d) **Unless expressly authorized by statute, a member of a**
10 **governing body of a public agency who is not physically present at**
11 **a meeting of the governing body but communicates with the**
12 **governing body members during the meeting by telephone,**
13 **computer, videoconferencing, or any other electronic means of**
14 **communication may not:**
15 (1) **participate in final action taken at the meeting; or**
16 (2) **be considered to be present at the meeting.**
17 (e) Subsection (d) does not apply to a governing body of a state

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1 **educational institution (as defined in IC 20-12-0.5-1).**

2 SECTION 2. IC 5-14-1.5-3.1 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2005]: **Sec. 3.1. (a) A governing body violates**
5 **this chapter if the governing body conducts a series of at least two**
6 **(2) gatherings of members of the governing body that fulfill the**
7 **following criteria:**

8 (1) **Each gathering is attended by less than a quorum of the**
9 **members of the governing body.**

10 (2) **The sum of the members of the governing body who attend**
11 **the gatherings constitutes at least a quorum of the governing**
12 **body.**

13 (3) **All the gatherings concern the same subject matter and**
14 **are held within a period of not more than seven (7) days.**

15 (4) **A member attends a gathering in person, by intermediary,**
16 **by telephone, or by other electronic means.**

17 (5) **The gatherings are held for the purpose of taking official**
18 **action on public business.**

19 **(b) A gathering under subsection (a) does not include:**

20 (1) **a social or chance gathering not intended to avoid this**
21 **chapter;**

22 (2) **an on-site inspection of any project or program;**

23 (3) **traveling to and attending meetings of organizations**
24 **devoted to betterment of government; or**

25 (4) **a caucus.**

26 **(c) A violation described in subsection (a) is subject to section 7**
27 **of this chapter.**

28 SECTION 3. IC 5-14-1.5-7 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7. (a) An action may be**
30 **filed by any person in any court of competent jurisdiction to:**

31 (1) **obtain a declaratory judgment;**

32 (2) **enjoin continuing, threatened, or future violations of this**
33 **chapter; or**

34 (3) **declare void any policy, decision, or final action:**

35 (A) **taken at an executive session in violation of section 3(a) of**
36 **this chapter;**

37 (B) **taken at any meeting of which notice is not given in**
38 **accordance with section 5 of this chapter;**

39 (C) **that is based in whole or in part upon official action taken**
40 **at any:**

41 (i) **executive session in violation of section 3(a) of this**
42 **chapter; or at any**

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(ii) meeting of which notice is not given in accordance with section 5 of this chapter; or

(iii) series of gatherings in violation of section 3.1 of this chapter;

(D) taken at a meeting held in a location in violation of section 8 of this chapter.

The plaintiff need not allege or prove special damage different from that suffered by the public at large.

(b) Regardless of whether a formal complaint or an informal inquiry is pending before the public access counselor, any action to declare any policy, decision, or final action of a governing body void, or to enter an injunction which would invalidate any policy, decision, or final action of a governing body, based on violation of this chapter occurring before the action is commenced, shall be commenced:

(1) prior to the delivery of any warrants, notes, bonds, or obligations if the relief sought would have the effect, if granted, of invalidating the notes, bonds, or obligations; or

(2) with respect to any other subject matter, within thirty (30) days of either:

(A) the date of the act or failure to act complained of; or

(B) the date that the plaintiff knew or should have known that the act or failure to act complained of had occurred;

whichever is later. If the challenged policy, decision, or final action is recorded in the memoranda or minutes of a governing body, a plaintiff is considered to have known that the act or failure to act complained of had occurred not later than the date that the memoranda or minutes are first available for public inspection.

(c) If a court finds that a governing body of a public agency has violated this chapter, it may not find that the violation was cured by the governing body by only having taken final action at a meeting that complies with this chapter.

(d) In determining whether to declare any policy, decision, or final action void, a court shall consider the following factors among other relevant factors:

(1) The extent to which the violation:

(A) affected the substance of the policy, decision, or final action;

(B) denied or impaired access to any meetings that the public had a right to observe and record; and

(C) prevented or impaired public knowledge or understanding of the public's business.

(2) Whether voiding of the policy, decision, or final action is a

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necessary prerequisite to a substantial reconsideration of the subject matter.

(3) Whether the public interest will be served by voiding the policy, decision, or final action by determining which of the following factors outweighs the other:

(A) The remedial benefits gained by effectuating the public policy of the state declared in section 1 of this chapter.

(B) The prejudice likely to accrue to the public if the policy, decision, or final action is voided, including the extent to which persons have relied upon the validity of the challenged action and the effect declaring the challenged action void would have on them.

(4) Whether the defendant acted in compliance with an informal inquiry response or advisory opinion issued by the public access counselor concerning the violation.

(e) If a court declares a policy, decision, or final action of a governing body of a public agency void, the court may enjoin the governing body from subsequently acting upon the subject matter of the voided act until it has been given substantial reconsideration at a meeting or meetings that comply with this chapter.

(f) In any action filed under this section, a court shall award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff prevails; or

(2) the defendant prevails and the court finds that the action is frivolous and vexatious.

The plaintiff is not eligible for the awarding of attorney's fees, court costs, and other reasonable expenses if the plaintiff filed the action without first seeking and receiving an informal inquiry response or advisory opinion from the public access counselor, unless the plaintiff can show the filing of the action was necessary to prevent a violation of this chapter.

(g) A court shall expedite the hearing of an action filed under this section.

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SENATE MOTION

Madam President: I move that Senator Antich-Carr be added as coauthor of Senate Bill 310.

GARD

SENATE MOTION

Madam President: I move that Senator Drozda be added as coauthor of Senate Bill 310.

GARD

SENATE MOTION

Madam President: I move that Senator Broden be added as second author and Senators Kruse and Miller be added as coauthors of Senate Bill 310.

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COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred Senate Bill No. 310, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 15, after "in" insert "**final action taken at**".

Page 1, between lines 16 and 17, begin a new paragraph and insert:

"(e) Subsection (d) does not apply to a governing body of a state educational institution (as defined in IC 20-12-0.5-1)."

Page 2, between lines 10 and 11, begin a new line block indented and insert:

"(3) All the gatherings concern the same subject matter and are held within a period of not more than seven (7) days."

Page 2, line 11, delete "(3)" and insert "(4)".

Page 2, line 13, delete "(4)" and insert "(5)".

and when so amended that said bill do pass.

(Reference is to SB 310 as introduced.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 10, Nays 0.

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